

AMENDED IN ASSEMBLY APRIL 5, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2039

Introduced by Assembly Member Ting

February 16, 2016

An act to amend Section 118286 of the Health and Safety Code, and to repeal and add Article 3.3 (commencing with Section 47115) of Chapter 1 of Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2039, as amended, Ting. Solid waste: home-generated sharps.

(1) The stated purpose of the California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy, and other natural resources. That act requires a pharmaceutical manufacturer selling or distributing medication that is intended to be self-injected at home to submit, on an annual basis, to the department a plan supporting the safe collection and proper disposal of specified waste devices, known as home-generated sharps.

This bill would require a producer of home-generated sharps or a stewardship organization designated by the producer to submit a home-generated sharps stewardship plan by July 1, 2018, to the Department of Resources Recycling and Recovery. The bill would require the plan to provide for the development and implementation of

a recovery program to reduce the generation of, and manage the end of life of, home-generated sharps, and to include specified elements, including provisions to meet specified minimum collection rates for the home-generated sharps subject to the plan.

This bill would provide for the review and approval of the plan by the department. The bill would require the department upon the date a plan is approved, to post on its Internet Web site a list of producers covered by the approved plan.

This bill would require a producer or stewardship organization, by April 1, 2020, and every year thereafter, to prepare and submit to the department an annual report describing the activities carried out pursuant to its plan during the previous calendar year. The department would be required to review *and either approve or disapprove* the report and, if the annual report does not demonstrate the achievement of the required collection rate increase, would authorize the department to impose a civil penalty on the producer or stewardship organization or to require the program to take additional actions with regard to improving and increasing the number of home-generated sharps collection points, ensuring accessibility to those points, and providing additional education and outreach activities.

This bill would require a producer or stewardship organization submitting a plan to the department to pay the department an annual administrative fee in an amount that is sufficient to cover the department's full costs of administering and enforcing these provisions. The bill would require the department to deposit the fees in the Safe Sharps Disposal Account, which the bill would establish in the Integrated Waste Management Fund, for the department's expenditure upon appropriation by the Legislature, to administer and enforce the bill's requirements.

This bill would authorize the department to impose an administrative civil penalty on a person who violates the bill's requirements. The department would be required to deposit all penalties collected into the Safe Sharps Disposal Penalty Account, which the bill would create in the Integrated Waste Management Fund, available upon appropriation by the Legislature, to enforce the bill's requirements.

The bill would require the department, by February 1, 2018, to appoint a stakeholder advisory committee to provide specific recommendations and strategic guidance to producers and stewardship organizations. The bill would also require the stakeholder advisory committee to annually

report to the department on the progress of the producers' and stewardship organizations' implementation of the bill's provisions.

(2) The Medical Waste Management Act, administered by the State Department of Public Health, prohibits a person from knowingly placing home-generated sharps waste in certain types of containers, requires that home-generated sharps waste be transported only in a sharps container, as defined in that act, or another container approved by the department or local enforcement agency, and requires that this waste be managed only at specified locations.

This bill would additionally allow home-generated sharps waste to be managed at a facility or collection point operated pursuant to an approved home-generated sharps stewardship plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The United States Environmental Protection Agency
4 ~~estimates that about 9 million people in the United States currently~~
5 ~~use disposable needles (sharps) at home to deliver medications to~~
6 ~~treat a variety of diseases and conditions, including diabetes,~~
7 ~~cancer, multiple sclerosis, migraines, and allergies. United States~~
8 ~~households use more than 3 billion disposable needles and syringes~~
9 ~~each year. (EPA) has determined that improper management of~~
10 ~~discarded sharps can pose a health risk to the public, waste~~
11 ~~workers, janitors, and others. Specifically, the EPA cites a risk of~~
12 ~~transmission of diseases such as HIV, hepatitis, tetanus, and~~
13 ~~syphilis. In an October 2004 report entitled Community Options~~
14 ~~for Safe Needle Disposal, the EPA states that approximately 3~~
15 ~~billion sharps are used in the home and that sharps users do not~~
16 ~~always understand the safest disposal methods. Additionally, a~~
17 ~~review of several studies, including one by the Department of~~
18 ~~Resources Recycling and Recovery, indicates that approximately~~
19 ~~43 percent of all self-injectors throw sharps in the trash.~~

20 (2) Since 2008, it has been illegal in California for individuals
21 to throw away home-generated sharps. While the state banned
22 needles from trash disposal in 2008, there is still no consistent,
23 statewide program that is sustainably funded or has high levels of

1 effectiveness in California. As a result, thousands of pounds of
2 illegally disposed sharps enter the municipal waste stream each
3 year, putting many people at risk of injury or infection.

4 (3) Sharps in the trash pose serious health risks to law
5 enforcement, firefighters, parks and recreation workers, hotel
6 housekeepers, sanitation workers, water treatment facility operators,
7 and the general public. In addition to the immediate risk of a needle
8 stick injury, sharps put individuals at risk of acquiring blood-borne
9 infectious diseases, such as hepatitis or HIV. Individuals who
10 suffer a needle stick injury must receive immediate treatment and
11 followup care, including multiple lab tests and medications.

12 (4) When sanitation workers encounter sharps, productivity
13 suffers and costs increase. When workers sustain a needle stick
14 injury, the costs of care are borne by the waste management
15 company, the workers' compensation insurer, and ultimately,
16 taxpayers and ratepayers.

17 (5) The California Legislature has adopted a 50 percent diversion
18 requirement for each local jurisdiction, and a policy goal of the
19 state that 75 percent of solid waste be source reduced, recycled,
20 or composted. Sanitation workers are increasingly hand-sorting
21 solid waste in an effort to meet the diversion requirements. Despite
22 repeated efforts to engineer protective gloves to prevent needle
23 sticks, the absence of a consistent sharps disposal policy in this
24 state is increasing the workplace danger for sanitation workers.

25 (6) In 2011, Assembly Bill 341 was enacted, declaring the 75
26 percent statewide policy goal and requiring the Department of
27 Resources Recycling and Recovery to submit a report to the
28 Legislature with regulatory and legislative recommendations for
29 achieving the goal. The report, which was issued in August 2015,
30 contains five priority strategies. One of the priority strategies
31 identified by the report is "extended producer responsibility," also
32 known as "product stewardship." Additionally, the report identifies
33 hazardous materials, which include sharps, as a problem waste
34 stream and recommends managing this problem product through
35 extended producer responsibility.

36 (b) It is the intent of the Legislature, in enacting the Safe
37 Home-Generated Sharps Recovery Program, as established by
38 Article 3.3 (commencing with Section 47115) of Chapter 1 of Part
39 7 of Division 30 of the Public Resources Code, to ensure affordable

1 and convenient sharps collection opportunities, which, in turn, will
2 help prevent the improper management of those sharps.

3 SEC. 2. Section 118286 of the Health and Safety Code is
4 amended to read:

5 118286. (a) A person shall not knowingly place
6 home-generated sharps waste in any of the following containers:

7 (1) Any container used for the collection of solid waste,
8 recyclable materials, or greenwaste.

9 (2) Any container used for the commercial collection of solid
10 waste or recyclable materials from business establishments.

11 (3) Any roll-off container used for the collection of solid waste,
12 construction, and demolition debris, greenwaste, or other recyclable
13 materials.

14 (b) Home-generated sharps waste shall be transported only in
15 a sharps container, or other containers approved by the enforcement
16 agency, and shall only be managed at any of the following:

17 (1) A household hazardous waste collection facility pursuant
18 to Section 25218.13.

19 (2) A “home-generated sharps consolidation point” as defined
20 in subdivision (b) of Section 117904.

21 (3) A medical waste generator’s facility pursuant to Section
22 118147.

23 (4) A facility through the use of a medical waste mail-back
24 container approved by the United States Postal Service.

25 (5) A facility or other home-generated sharps collection point
26 operated pursuant to a home-generated sharps stewardship plan
27 approved pursuant to Article 3.3 (commencing with Section 47115)
28 of Chapter 1 of Part 7 of Division 30 of the Public Resources Code.

29 SEC. 3. Article 3.3 (commencing with Section 47115) of
30 Chapter 1 of Part 7 of Division 30 of the Public Resources Code
31 is repealed.

32 SEC. 4. Article 3.3 (commencing with Section 47115) is added
33 to Chapter 1 of Part 7 of Division 30 of the Public Resources Code,
34 to read:

35
36 Article 3.3. Safe Home-Generated Sharps Recovery Program

37
38 47115. For purposes of this article, the following terms have
39 the following meanings:

1 (a) “Consumer” means a person who purchases or owns
2 home-generated sharps.

3 (b) “Distributor” means a person that sells sharps or provides
4 sharps for free to the general public for home use, which may
5 include, but is not limited to, a retailer, a veterinarian, or a health
6 clinic, health dispensary, or health facility licensed under Division
7 2 (commencing with Section 1200) of the Health and Safety Code.

8 (c) “Home-generated sharps” means hypodermic needles,
9 syringes with needles attached, pen needles, intravenous needles,
10 lancets, or any other similar device intended to self-inject
11 medication at home.

12 (d) “Home-generated sharps stewardship plan” or “plan” means
13 a plan submitted by an individual producer or by a stewardship
14 organization on behalf of one or more producers.

15 (e) “Producer” means, with regard to home-generated sharps
16 that are sold, offered for sale, or distributed in the state, one of the
17 following:

18 (1) The person who manufactures home-generated sharps and
19 who sells, offers for sale, or distributes those home-generated
20 sharps in the state under that person’s own name or brand.

21 (2) If there is no person who is a producer of the home-generated
22 sharps for purposes of paragraph (1), the producer of the
23 home-generated sharps is the owner or licensee of a trademark or
24 brand under which the home-generated sharps are sold or
25 distributed in the state, whether or not the trademark is registered.

26 (3) If there is no person who is a producer of the sharps for
27 purposes of paragraphs (1) and (2), the producer of those sharps
28 is the person who imports the home-generated sharps into the state
29 for sale or distribution.

30 (f) “Program” means the program implementing an approved
31 home-generated sharps stewardship plan.

32 (g) “Retailer” means a person that sells home-generated sharps
33 in the state to a consumer. A sale includes, but is not limited to, a
34 transaction conducted through sales outlets, catalogs, or the Internet
35 or any other similar electronic means.

36 (h) “Stewardship organization” means a nonprofit organization
37 created by one or more producers ~~the governing board of which~~
38 ~~includes three additional members, appointed by the director, one~~
39 ~~representing from each of the following entities: to act as an agent~~

1 *on behalf of the producers to design, submit, and administer a*
2 *product stewardship plan pursuant to this article.*

3 ~~(1) A local government.~~

4 ~~(2) A retailer.~~

5 ~~(3) A solid waste hauler.~~

6 (i) “Stakeholder” means a person who will be subject to, or
7 participate in, the program that will be implemented by a proposed
8 home-generated sharps stewardship plan, including, but not limited
9 to, consumers, retailers, distributors, and health care providers and
10 facilities.

11 47115.2. On or before January 1, 2018, the department shall
12 adopt regulations implementing this article.

13 47115.4. (a) On or before February 1, 2018, the department
14 shall appoint a stakeholder advisory committee to provide specific
15 recommendations and strategic guidance to producers and
16 stewardship organizations. The stakeholder advisory committee
17 shall report annually to the department on the progress of the
18 producers’ and stewardship organizations’ implementation of this
19 article.

20 (b) Members of the advisory committee shall include members
21 from the environmental community, solid waste haulers, local
22 governments, retailers, and other key stakeholders.

23 (c) The stakeholder advisory committee shall be independent
24 of the producers and stewardship organizations. The advisory
25 committee’s expenses shall be paid by its members and not the
26 producers or stewardship organizations.

27 (d) A producer or stewardship organization shall have no control
28 over the stakeholder advisory committee or its activities.

29 47116. A pharmaceutical manufacturer that sells or distributes
30 a medication in the state that is usually intended to be self-injected
31 at home through the use of a home-generated sharp shall submit,
32 on or before July 1 of each year, to the department, or its successor
33 agency, a plan that describes how the manufacturer supports the
34 safe collection and proper disposal of the home-generated sharps.

35 47117. (a) On or before July 1, 2018, a producer or a
36 stewardship organization designated by a producer shall submit a
37 home-generated sharps stewardship plan to the department. The
38 home-generated sharps stewardship plan shall also be posted on
39 the Internet Web site of the producer or stewardship organization.

1 The plan shall provide for the implementation of the plan for each
2 calendar year, commencing January 1, 2019.

3 (b) The producer or stewardship organization shall consult with
4 the stakeholder advisory committee during the development of the
5 home-generated sharps stewardship plan, including soliciting and
6 responding to stakeholder advisory committee comments, and shall
7 document those comments in the plan.

8 (c) The home-generated sharps stewardship plan shall provide
9 for the development and implementation of a recovery program
10 to reduce the generation of, and manage the end of life of,
11 home-generated sharps in an environmentally sound and medically
12 safe manner, including collecting, transporting, processing, and
13 recycling or disposing. The plan shall include, at a minimum, all
14 of the following elements:

15 (1) Contact information for all participating producers.

16 (2) Procedures for calculating the amount, by weight, of the
17 home-generated sharps subject to the plan.

18 (3) Provisions to meet the minimum collection rate for the
19 home-generated sharps subject to the plan, which shall be
20 determined in the following manner:

21 (A) On and after January 1, 2020, the minimum collection rate
22 shall be 20 percent of the ~~number~~ *amount, by weight*, of
23 home-generated sharps that are sold in the state during the 2017
24 calendar year by producers.

25 (B) On and after January 1, 2021, the minimum collection rate
26 shall be 40 percent of the ~~number~~ *amount, by weight*, of
27 home-generated sharps that are sold in the state during the 2017
28 calendar year by the producers.

29 (C) On and after January 1, 2022, the minimum collection rate
30 shall be 60 percent of the ~~number~~ *amount, by weight*, of
31 home-generated sharps that are sold in the state during the 2017
32 calendar year by the producers.

33 (D) On and after January 1, 2023, and annually thereafter, the
34 minimum collection rate shall be determined pursuant to Section
35 47120.

36 (4) A demonstration of sufficient funding for the home-generated
37 sharps stewardship program proposed by the plan, including a
38 funding mechanism for securing and disbursing funds to cover
39 administrative, operational, and capital costs.

1 (5) Coordination of the home-generated sharps stewardship
2 ~~program plan~~ with existing local ~~medical waste household~~
3 ~~hazardous waste and other~~ collection programs, to the extent this
4 requirement is reasonably feasible and mutually agreeable.

5 (6) Programs to reduce the number of ~~postconsumer~~
6 *home-generated* sharps that are illegally disposed of, and to
7 maximize the proper end-of-life management of home-generated
8 sharps, including the collection of home-generated sharps, as
9 practical, based on current medical waste program information.

10 (7) Education and outreach efforts for consumers, the medical
11 community, and retailers to promote the collection of
12 home-generated sharps. These efforts may include, but are not
13 limited to, developing, and updating as necessary, educational and
14 other outreach materials aimed at all retailers and distributors of
15 home-generated sharps. These materials shall be made available
16 to those parties and may include, but are not limited to, one or
17 more of the following:

18 (A) Signage that is prominently displayed and easily visible to
19 the consumer at the point of sale.

20 (B) Written materials and templates of materials for reproduction
21 by retailers to be provided to the consumer at the point of sale or
22 delivery, or both. These written materials shall include information
23 on the prohibition on the improper disposal of home-generated
24 sharps.

25 (C) Advertising or other promotional materials, or both, that
26 include references to home-generated sharps collection
27 opportunities and the prohibition on the improper disposal of
28 home-generated sharps.

29 (8) Methods for demonstrating to the department that the
30 program implemented pursuant to the plan achieves the maximum
31 improvement possible in achieving the minimum collection rate.

32 (9) The establishment of at least one home-generated sharps
33 collection point in every county in the state, but no less than one
34 home-generated sharps collection point for every 25,000 people
35 in each county.

36 (10) *Procedures for complying with all applicable state and*
37 *federal laws and regulations for the collection, consolidation,*
38 *transportation, and recycling or disposal of home-generated sharps*
39 *waste.*

1 47118. (a) The department shall review a home-generated
2 sharps stewardship plan submitted pursuant to Section 47117 within
3 60 days of receipt. The department shall approve the plan if the
4 department determines the plan provides for the establishment of
5 a home-generated sharps stewardship program that meets the
6 requirements of Section 47117. If the department does not approve
7 the plan, the producer or stewardship organization shall resubmit
8 the plan within 60 days after receiving notice of disapproval from
9 the department.

10 (b) (1) The approved plan shall be a public record, except that
11 financial, production, or sales data reported to the department by
12 the producer or by the stewardship organization is not a public
13 record under the California Public Records Act (Chapter 3.5
14 (commencing with Section 6250) of Division 7 of Title 1 of the
15 Government Code) and shall not be open to public inspection.

16 (2) Notwithstanding paragraph (1), the department may release
17 financial, production, or sales data in summary form, if the
18 department does not disclose financial, production, or sales data
19 of individual producers.

20 (c) On or before January 1, 2019, or three months after a plan
21 is approved pursuant to subdivision (a), whichever is later, but no
22 later than April 1, 2019, the producer or stewardship organization
23 shall implement the home-generated sharps stewardship program
24 described in the approved plan.

25 47119. A retailer may voluntarily participate as a
26 home-generated sharps collection point pursuant to the
27 home-generated sharps stewardship program.

28 47120. On or before January 1, 2023, the department shall
29 consult with producers, stewardship organizations, the stakeholder
30 advisory committee, and all other stakeholders regarding the
31 program's performance. The department shall set a fair and
32 reasonable minimum collection rate for the 2023 calendar year
33 and for each subsequent calendar year to achieve the goal of safely
34 managing home-generated sharps in this state.

35 47121. Upon the date a plan is approved, the department shall
36 post on its Internet Web site a list of producers covered by the
37 approved plan. The department shall update this posting within 30
38 days of a change in compliance status of any producer.

39 47122. On or before April 1, 2020, and on or before April 1
40 of every year thereafter, each producer or stewardship organization

1 implementing a plan shall prepare and submit to the department
2 an annual report, as prescribed by the department, describing the
3 activities carried out pursuant to the plan during the previous
4 calendar year, commencing with the 2019 calendar year. The report
5 shall include a list of the specific recommendations from the
6 stakeholder advisory committee and an explanation for either
7 accepting or rejecting those recommendations.

8 47123. (a) The department shall review *and either approve*
9 *or disapprove* the annual report or reports submitted pursuant to
10 Section 47122, including, but not limited to, reviewing the accuracy
11 of the list of home-generated sharps collection points that are
12 certified to be established pursuant to the applicable plan.

13 (b) If an annual report does not demonstrate that the applicable
14 program has achieved the collection rate increase required pursuant
15 to paragraph (3) of subdivision (c) of Section 47117, the
16 department may require the program to take additional actions
17 with regard to improving and increasing the number of
18 home-generated sharps collection points, ensuring accessibility to
19 those points, and providing additional education and outreach
20 activities.

21 (c) If the department does not *approve or disapprove* a report
22 within 45 days of receipt, the report shall be deemed approved by
23 the department.

24 (d) The department shall make a report ~~submitted to~~ *approved*
25 *by* the department pursuant to this section available to the public
26 on the department's Internet Web site for one year.

27 47125. (a) A producer or stewardship organization submitting
28 a plan to the department shall pay the department an annual
29 administrative fee pursuant to subdivision (b).

30 (b) The department shall impose the annual fee in an amount
31 that is sufficient to cover the department's full costs of
32 administering and enforcing this article, including any program
33 development costs or regulatory costs incurred by the department
34 prior to the submittal of a plan. The department shall deposit the
35 fees in the Safe Sharps Disposal Account, which is hereby
36 established in the Integrated Waste Management Fund. The
37 department may expend the moneys in the Safe Sharps Disposal
38 Account, upon appropriation by the Legislature, to administer and
39 enforce this article.

1 47126. (a) The department shall enforce this article and may
2 impose an administrative civil penalty on a person who violates
3 this article in an amount of up to one thousand dollars (\$1,000)
4 per violation per day.

5 (b) The department may impose an administrative civil penalty
6 on a person who intentionally, knowingly, or negligently violates
7 this article in an amount of up to ten thousand dollars (\$10,000)
8 per violation per day.

9 (c) (1) The department may either impose the civil penalty
10 specified in subdivision (a) or (b) on a producer or stewardship
11 organization for which the annual report submitted does not
12 demonstrate that the minimum collection rate has been achieved
13 pursuant to paragraph (3) of subdivision (c) of Section 47117, or
14 require the producer or stewardship organization to take additional
15 actions to comply with this article pursuant to subdivision (b) of
16 Section 47123.

17 (2) In assessing a penalty pursuant to this subdivision on a
18 producer or stewardship organization, the department shall consider
19 any exigent circumstance that contributed to the producer or
20 stewardship organization not meeting the required minimum
21 collection rate.

22 (d) The department shall deposit all penalties collected pursuant
23 to this section into the Safe Sharps Disposal Penalty Account,
24 which is hereby created in the Integrated Waste Management Fund.
25 Upon appropriation by the Legislature, moneys deposited into the
26 Safe Sharps Disposal Penalty Account may be expended by the
27 department to enforce this article.

28 47127. (a) Except as provided in subdivision (c), an action
29 solely to increase the collection of home-generated sharps by a
30 producer, stewardship organization, or retailer that affects the types
31 or quantities being collected, or the cost and structure of any
32 program implementing a stewardship plan, is not a violation of
33 the statutes specified in subdivision (b).

34 (b) The following statutes are not violated by an action specified
35 in subdivision (a):

36 (1) The Cartwright Act (Chapter 2 (commencing with Section
37 16700) of Part 2 of Division 7 of the Business and Professions
38 Code).

1 (2) The Unfair Practices Act (Chapter 4 (commencing with
2 Section 17000) of Part 2 of Division 7 of the Business and
3 Professions Code).

4 (c) Subdivision (a) does not apply to an agreement establishing
5 or affecting the price of home-generated sharps or the output or
6 production of home-generated sharps or an agreement restricting
7 the geographic area or customers to which home-generated sharps
8 will be sold.

O